



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

VIA CERTIFIED MAIL

MAY 27 2015

Jonathan Broyhill
Offender No. 1372378
Central Prison
1300 Western Blvd.
Raleigh, NC 27606

RE: MUR 6738

Dear Mr. Broyhill:

On June 6, 2013, the Federal Election Commission (the "Commission") notified you, via Joseph Arbour, of a complaint alleging that you violated the Federal Election Campaign Act of 1971, as amended (the "Act"). A copy of the complaint was forwarded to you at that time.

After reviewing the allegations contained in the complaint and publicly available information, on May 19, 2015, the Commission found reason to believe that you knowingly and willfully violated 52 U.S.C. § 30114(b), a provision of the Act. Enclosed is the Factual and Legal Analysis that sets forth the basis for the Commission's determination.

Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519.

In order to expedite the resolution of this matter, the Commission has authorized the Office of the General Counsel to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Pre-probable cause conciliation is not mandated by the Act or the Commission's regulations, but is a voluntary step in the enforcement process that the Commission is offering to you as a way to resolve this matter at an early stage and without the need for briefing the issue of whether or not the Commission should find probable cause to believe that you violated the law.

If you are interested in engaging in pre-probable cause conciliation, please contact Emily Meyers, the attorney assigned to this matter, at (202) 694-1650 or (800) 424-9530, within seven days of receipt of this letter. During conciliation, you may submit any factual or legal materials that you believe are relevant to the resolution of this matter. Because the Commission only enters into pre-probable cause conciliation in matters that it believes have a reasonable opportunity for settlement, we may proceed to the next step in the enforcement process if a

1372378-1

Jonathan Broyhill
MUR 6738 (Jonathan Broyhill)
Page 2 of 2

mutually acceptable conciliation agreement cannot be reached within sixty days. *See* 52 U.S.C. § 30109(a), 11 C.F.R. Part 111 (Subpart A). Conversely, if you are not interested in pre-probable cause conciliation, the Commission may conduct formal discovery in this matter or proceed to the next step in the enforcement process. Please note that once the Commission enters the next step in the enforcement process, it may decline to engage in further settlement discussions until after making a probable cause finding.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed Statement of Designation of Counsel form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

In the meantime, this matter will remain confidential in accordance with 52 U.S.C. §§ 30109(a)(4)(B) and 30109(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. We look forward to your response.

On behalf of the Commission,



Ann M. Ravel
Chair

Enclosures

Factual and Legal Analysis

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**FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS**

Respondent: Jonathan W. Broyhill

MUR: 6738

I. INTRODUCTION

The Commission finds reason to believe that Jonathan W. Broyhill knowingly and willfully violated 52 U.S.C. § 30114(b) when he made a total of approximately \$58,000 of unauthorized disbursements while serving as bookkeeper to Brad Miller for United States Congress and John R. Wallace in his official capacity as treasurer (the "Committee").

The Commission has obtained information that Broyhill was the sole employee of SkyBlue Strategies ("SkyBlue"), a proprietorship owned and operated by Jamie Hahn, and the Committee engaged SkyBlue in early 2011 to provide campaign management, fundraising, and compliance services. Hahn delegated the Committee's bookkeeping and recordkeeping duties to Broyhill, which gave Broyhill access to the Committee's mailbox, telephone, e-mail account, bank account, checkbook, and reporting software. From February 2011 through March 2013, Broyhill allegedly embezzled approximately \$58,000 from the Committee and concealed his embezzlement by entering in the Committee's records false creditor payments or disbursements to other candidate committees or former contributors.¹

On April 22, 2013, a few days after the Committee and Hahn discovered Broyhill's embezzlement, Broyhill assaulted Jamie Hahn and her husband, Nation Hahn, when she confronted Broyhill about his activities. On March 18, 2015, Broyhill was convicted of first-degree murder of Jamie Hahn, and on March 19, 2015, Broyhill was sentenced to life in prison without the possibility of parole. Broyhill filed an immediate notice of appeal.

¹ Compl. at 1 (May 30, 2013).

1 approximately \$11,000 in 86 other unauthorized disbursements of Committee funds, which he
2 then entered in the Committee's accounting and reporting software as refunds to contributors,
3 contributions to other candidates, or creditor payments.² Broyhill's activities led to "widespread
4 discrepancies between the disbursements that [Broyhill] reported the Committee making and the
5 actual disbursements made by the Committee[.]"³ For example, as identified in a Request For
6 Additional Information ("RFAI") regarding the Committee's 2012 July Quarterly Report, the
7 Committee reported refunding a total of \$15,900 to five contributors who had originally
8 contributed a total of only \$8,250.⁴ Furthermore, not only did Broyhill file inaccurate reports
9 with the Commission, but Broyhill neglected to file the Committee's 2012 Year-End Report.

10 The Commission has obtained information that Broyhill's embezzlement resulted in a
11 loss to the Committee in an amount in excess of \$60,000.⁵ Although it appears that Broyhill
12 embezzled committee funds as early as February 14, 2011, the Committee discovered the
13 embezzlement only in April 2013, after Broyhill failed to revise the draft 2013 April Quarterly
14 Report as Wallace directed. The Commission has obtained information that Wallace met with
15 Hahn and Broyhill to express his concerns about the inaccuracy of the Committee's disclosure
16 reports and his suspicions of Broyhill's embezzlement. Approximately four or five days later, on

² See Committee 2012 and 2014 Operating Expenditures, Two-Year Summary, Campaign Finance Disclosure Portal - Candidate and Committee Viewer, available at <http://www.fec.gov/fecviewer/CandidateCommitteeDetail.do>; Compl. at 1.

³ Form 99 (Aug. 7, 2013) ("August Form 99") at 1.

⁴ See Letter from Chris Jones, RAD, FEC to John Wallace, Treasurer, Brad Miller for United States Congress (Oct. 1, 2012). Four of these refunds appear to be an effort to conceal unauthorized campaign expenditures, as the Committee explains they never cleared the bank account. One of the refunds was legitimate, as it was endorsed and negotiated by the contributor. The Committee never received the RFAI or other Commission correspondence because Broyhill intercepted and concealed the mail sent to the Committee's post office box. August Form 99 at 1.

⁵ Compl. at 1.

1 April 22, 2013, Hahn and Broyhill met at Hahn's home, purportedly to discuss Broyhill's
2 embezzlement. It was during that meeting that Broyhill fatally stabbed Hahn.

3 As noted, Broyhill was tried and found guilty of Hahn's murder. Broyhill was not
4 charged relating to the embezzlement, but the Commission has obtained information that most of
5 the Committee's records, including bank statements, check book, records of accounts payable,
6 and the Committee's laptop computers were seized by the local police department pursuant to a
7 search warrant issued in connection with the murder prosecution. It appears that evidence of
8 Broyhill's embezzlement was used to establish Broyhill's motive for Hahn's murder.

9 **B. Legal Analysis**

10 The Federal Election Campaign Act of 1971, as amended (the "Act"), identifies six
11 categories of permissible uses of contributions accepted by a federal candidate.⁶ These
12 permissible uses of campaign funds include paying "authorized expenditures in connection with
13 the campaign for Federal office of the candidate or individual," "ordinary and necessary
14 expenses incurred in connection with duties of the individual as a holder of Federal office," as
15 well as "any other lawful purpose."⁷ Contributions accepted by a candidate, however, may not
16 be converted to "personal use" by any person.⁸ Conversion occurs when funds in a campaign
17 account are "used to fulfill any commitment, obligation, or expense of a person that would exist
18 irrespective of the candidate's campaign or . . . duties as a holder of federal office."⁹ The Act
19 and Commission regulations set forth a non-exhaustive list of examples that would constitute

⁶ 52 U.S.C. § 30114(a); *see also* 11 C.F.R. Part 113.

⁷ 52 U.S.C. § 30114(a)(1), (2), (6); *see also* 11 C.F.R. § 113.2.

⁸ 52 U.S.C. § 30114(b)(1); *see also* 11 C.F.R. § 113.2(c).

⁹ 52 U.S.C. § 30114(b)(2); *see also* 11 C.F.R. § 113.1(g).

1 personal use *per se*, such as mortgage payments, tuition payments, non-campaign-related
2 automobile expenses, and health club dues.¹⁰ For items not on this list, the Commission
3 determines on a case-by-case basis whether an expense would fall within the definition of
4 “personal use.”¹¹

5 From February 2011 through March 2013, Broyhill allegedly made 125 unauthorized
6 disbursements from Committee funds, including 39 payments to himself, totaling approximately
7 \$58,000. These disbursements were apparently for Broyhill’s own personal use and were
8 misreported on the Committee’s disclosure reports. Broyhill’s unauthorized disbursements range
9 in amount from approximately \$9.00 to \$12,500.00, and, in addition to payments to Broyhill,
10 most disbursements are to restaurants, gas stations, office supply stores, and mobile telephone
11 providers. Because the Committee is unable to identify a legitimate campaign-related purpose
12 for these disbursements, it appears that Broyhill converted approximately \$58,000 for expenses
13 that existed irrespective of Congressman Miller’s campaign or official duties in violation of the
14 personal use provision of the Act.

15 The Act prescribes additional penalties for violations that are knowing and willful.¹²
16 A violation of the Act is knowing and willful if the act was “taken with full knowledge of all the
17 facts and a recognition that the action is prohibited by law.”¹³ But this standard does not require
18 the Commission to prove that the respondent acted with knowledge of the specific statute or

¹⁰ 52 U.S.C. § 30114(b)(2)(A)-(I); 11 C.F.R. § 113.1(g).

¹¹ 11 C.F.R. § 113.1(g)(1)(ii).

¹² See 52 U.S.C. §§ 437g(a)(5)(B) and 437g(d).

¹³ 122 Cong. Rec. 12,197, 12,199 (May 3, 1976).

1 regulation allegedly violated.¹⁴ Instead, it is sufficient to demonstrate that the respondent “acted
2 voluntarily and was aware that his conduct was unlawful.”¹⁵ This awareness may be shown by
3 circumstantial evidence from which the respondent’s unlawful intent reasonably may be
4 inferred.¹⁶ For example, a person’s awareness that an action is prohibited may be inferred from
5 the circumstances, such as the person’s “elaborate scheme for disguising” his actions.¹⁷
6 Broyhill’s efforts to conceal his unauthorized disbursements by recording them in the
7 Committee’s books and disclosure reports as payments to a creditor, or disbursements to a
8 candidate committee, or contributor refund indicate that Broyhill knew that his conduct was
9 illegal. That Broyhill attacked Hahn when she confronted him about the missing funds and
10 inaccurate bookkeeping further suggests that Broyhill was aware that he broke the law when he
11 made the unauthorized disbursements.

12 Accordingly, the Commission has determined to find reason to believe that Broyhill
13 knowingly and willfully violated 52 U.S.C. § 30114(b).

¹⁴ *United States v. Danielczyk*, 917 F. Supp. 2d 573, 579 (E.D. Va. 2013) (quoting *Bryan v. United States*, 524 U.S. 184, 195 & n.23 (1998) (holding that, to establish a violation is willful, government needs to show only that defendant acted with knowledge that conduct was unlawful, not knowledge of specific statutory provision violated)).

¹⁵ *Id.* (citing jury instructions in *United States v. Edwards*, No. 11-61 (M.D.N.C. May 18, 2012), *United States v. Acevedo Vila*, No. 08-36 (D.P.R. Mar. 20, 2009), *United States v. Fieger*, No. 07-20414 (E.D. Mich. Jun. 2, 2008), *United States v. Alford*, No. 05-69 (N.D. Fla. Oct. 7, 2005)).

¹⁶ *Cf. United States v. Hopkins*, 916 F.2d 207, 213 (5th Cir. 1990) (quoting *United States v. Bordelon*, 871 F.2d 491, 494 (5th Cir. 1989)). *Hopkins* involved a conduit contributions scheme, and the issue before the Fifth Circuit concerned the sufficiency of the evidence supporting the defendants’ convictions for conspiracy and false statements under 18 U.S.C. §§ 371 and 1001.

¹⁷ *Id.* at 214-15. As the *Hopkins* court noted, “It has long been recognized that ‘efforts at concealment [may] be reasonably explainable only in terms of motivation to evade’ lawful obligations.” *Id.* at 214 (quoting *Ingram v. United States*, 360 U.S. 672, 679 (1959)).